

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
RECEIVED
REGIONAL HEARING

IN THE MATTER OF:) Docket No. 02: CAA-5-2001-010;
) FIFRA-5-2001-019;
Ashta Chemicals, Inc.) MM-5-2001-004
Ashtabula County)
Ashtabula, Ohio,)
Respondent.) Proceeding to Assess an
) Administrative Penalty under
) Section 113(d) of the Clean
) Air Act, 42 U.S.C. § 7413(d),
) and Section 14(a) of FIFRA, 7
) U.S.C. §1361(a)

Consent Agreement and Final Order

1. Complainant, the Regional Administrator, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. §1361.

2. On June 13, 2001, U.S. EPA filed the complaint in this action against Respondent Ashta Chemicals, Inc., (Ashta). The complaint alleges that Ashta violated Section 112 of the CAA, 42 U.S.C. § 7412, and the Ohio State Implementation plan submitted in accordance with Section 110 of the CAA, 42 U.S.C. § 7410, at its facility in Ashtabula, Ohio. In particular, the

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complaint alleges violations of the following CAA, and CAA approved Ohio State Implementation (SIP), requirements: OAC 3745-31-02 (SIP rule requiring compliance with the permit to install, where the permit requires installing and operating a baghouse); OAC 3745-17-08 (SIP rule requiring reasonably available control measures); 40 C.F.R. § 52.23 (requiring compliance with the permit's emission limit); OAC 3745-17-11 (SIP rule requiring compliance with the anhydrous potassium carbonate process industrial mass emission rate); 40 C.F.R. § 61.55(b)(4) (requiring monitoring and record keeping); and 40 C.F.R. § 61.12 (requiring operation and maintenance of each stationary source in a manner consistent with good air pollution control practice).

3. The June 13, 2001, U.S. EPA complaint also alleges that Ashta violated, at its facility in Ashtabula, Ohio, Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) (producing pesticide in an unregistered establishment); 40 C.F.R. § 169.2(a) and Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) (failing to prepare and maintain records); 40 C.F.R. § 156.10(a)(5) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) (false, misleading and misbranded pesticide product [for Chloropicrin]); 40 C.F.R. § 156.10(a)(5) and Section

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12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) (false, misleading and misbranded pesticide product [for Chlorine]); and Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R Part 167, Subpart E (requiring Annual Pesticide Reports for years 1996, 1997 and 1998, due respectively by March 1, of 1997, 1998, and 1999).

4. Ashta filed an answer and requested a hearing under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), and Section 14(a)(3) of FIFRA, 7 U.S.C. § 1361(a)(3).

Stipulations

5. Ashta admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

6. Ashta waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4), and Section 14 of FIFRA, 7 U.S.C. §1361.

7. Ashta certifies that it is complying fully with the regulations cited in paragraphs 2 and 3, above.

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8. The parties consent to the terms of this consent agreement and final order (CAFO).

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

10. If any obligation under this CAFO is due on a weekend or federal holiday, the obligation shall be due on the next business day.

Civil Penalty

11. In consideration of Ashta's assertions that its "size of violator" should be based on \$12,000,000; that there is no record of excess mercury emissions; and that the number of violation-days for count IV is 28, U.S. EPA agrees to mitigate the proposed penalty of \$280,500 to \$239,800. This settlement resolves both the CAA proposed penalty of \$247,500 for \$207,900, and the FIFRA proposed penalty of \$33,000 for \$31,900.

12. Ashta must pay the \$239,800 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within 30 days after the effective date of this CAFO.

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13. Ashta must send the checks to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

14. A transmittal letter, stating Respondent's name, complete address, the case docket numbers, and the billing document number must accompany the payment. Respondent must write the case docket numbers and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Stuart P. Herish, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

15. This civil penalty is not deductible for federal tax purposes.

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16. If Ashta does not pay timely the civil penalty U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and Section 14(a) of FIFRA,, 7 U.S.C. §1361. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

17. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Ashta will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Ashta will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), and/or Section 14(a) of FIFRA,, 7 U.S.C. §1361. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

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General Provisions

18. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

19. Nothing in this CAFO restricts U.S. EPA's authority to seek Ashta's compliance with the CAA, FIFRA and other applicable laws and regulations.

20. This CAFO does not affect Ashta's responsibility to comply with the CAA, FIFRA and other applicable federal, state and local laws, and regulations.

21. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Ashta's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

22. The terms of this CAFO bind Ashta, and its successors, and assigns.

23. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement

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for the party whom he or she represents and to bind that party to its terms.

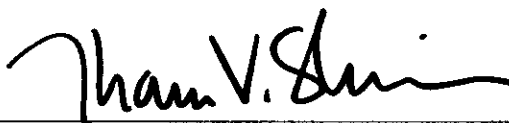
24. Each party agrees to bear its own costs and fees in this action.

25. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection
Agency, Complainant

Date: 2.1.02

By: _____




Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5 (19J)

Ashta Chemicals, Inc., Respondent

Date: 1/18/02

By: _____



Richard L. Jackson
V.P. Operations
Ashta Chemicals, Inc.

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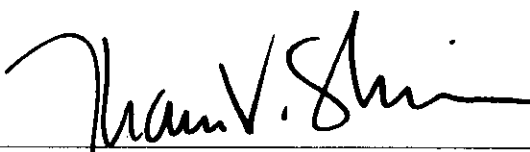
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Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 2.10.02



Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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CERTIFICATE OF SERVICE

US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers CAA-5-2001-010; FIFRA-5-2001-019; MM-5-2001-004 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Judge Biro, Ashta Chemicals, and Steven Bell, Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Richard L. Jackson, V.P. Operations
Ashta Chemicals, Inc.
3509 Middle Road
P.O. Box 858
Ashtabula, OH 44004

AND

Steven D. Bell, Esq.
The Simon Law Firm, LLP
1717 Penton Media Building
1300 East Ninth Street
Cleveland, Ohio 44114-1583

I also certify that copies of the Consent Agreement and Consent Order were sent by First Class Mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

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Dennis Bush, APC Supervisor
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

on the 1st day of February, 2002.

Letty Williams for Shanee Rucker
Shanee Rucker, Secretary
AECAS (OH/MN)

CERTIFIED MAIL RECEIPT NUMBER: 70993400 0000 95976747 - Richard L. Jackson
V.P. Operation
70993400 0000 95864358 - Steven D. Bell, Esq